



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-051

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

1. Statutory Authority

Section Chir 12.05 (3) establishes a limitation on “dispensing” by a chiropractic office and refers to a “sale.” However, neither the rule nor s. 446.02 (6m), Stats., as created by 2005 Wisconsin Act 25, explicitly grant authority for a chiropractor to “dispense” or sell any substance. Section Chir 12.05 (1) and s. 446.02 (6m), Stats., as created by 2005 Wisconsin Act 25, authorize a certified chiropractor to provide “counsel, direction, guidance or advice or a recommendation” but do not authorize a chiropractor to dispense or sell any item. Is there separate statutory authority for a chiropractor to dispense or sell a nutritional item or can any person engage in this activity without a license, permit, or registration?

2. Form, Style and Placement in Administrative Code

a. Section Chir 12.02 (1) (c) 4. should be rewritten to read: “Received a degree from or otherwise successfully completed a postgraduate program after the effective date of this section...[revisor inserts date] consisting of a minimum of 48 hours in human nutrition that is approved by the board after the effective date of this section...[revisor inserts date].”

b. In s. Chir 12.03 (1) (intro.), the phrase “all of” should be inserted after the word “meets.”

c. In s. Chir 12.03 (2) (a) (intro.), the phrase “include all of the following” should be replaced by the phrase “meet all of the following requirements.” Also, in sub. (2) (a) 7. (intro.),

the word “each” should be replaced by the word “all.” Finally, to maintain parallel construction, the phrase “The program shall” in sub. (2) (a) 8. and 9. should be deleted.

d. The material in s. Chir 12.04 (5) and (6) does not pertain to denial of an application for program approval and therefore should not be included in s. Chir 12.04. If the board intends to revoke approval of a program for violation of the requirements set forth in s. Chir 12.04 (5) and (6), that should be clearly stated in an appropriately designated portion of the rule.

e. It is unclear why the material set forth in s. Chir 12.05 (1), (2), and (3), which all describe practices that a certified chiropractor is authorized to engage in, are located in a section of the rule entitled “Prohibited practices.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. The “Explanation of agency authority” in the analysis to the rule states that 2005 Wisconsin Act 25 “contained changes” to s. 446.02 (2) (c) and (6m), Stats. That provision should be modified to accurately state that Act 25 created, rather than changed, the statutory provisions cited.

b. In s. Chir 12.03 (1) (b) 9., it is unclear what is meant by “Codex Alimentarius recommendations.” It appears that the Codex Alimentarius consists of a set of standards, not recommendations. Also, since the Codex covers a very wide range of food-related topics, the rule should specify which Codex “recommendations” (or standards) must be included in the core curriculum of an approved program.

c. In s. Chir. 12.03 (1) (b) 10., “of 1994, P.L. 103-417” should be inserted after “act.”

d. Section Chir 12.03 (2) (a) 2. should contain a cross-reference to the rule provision that sets forth required qualifications of program sponsors.

e. The reference to s. Chir 2.02 (6) (b), contained in s. Chir 12.03 (2) (a) 5., is unclear. The cited provision sets forth requirements for transcripts that must be included in an application for an initial license to practice chiropractic.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the fifth paragraph of the “Plain language analysis” “hour” should be changed to “hours.”

b. In s. Chir 12.01 (2), the defined term is not grammatically compatible with the definition provided. Either “Dispensing” should be changed to “Dispense” or “to deliver” should be changed to “delivering.”

c. “Metabolic” is an adjective. It appears to be incorrectly used as a noun in s. Chir 12.01 (4). In addition, in that provision, it appears that the phrase “or is labeled as a nutritional or dietary supplement” is also incorrectly used as a noun. Also, it is unclear whether the item referred to as “or is labeled as a nutritional or dietary supplement” is meant to be an item included as a “nutritional supplement” or is a “dietary ingredient” that may be contained within a

product that is a nutritional supplement. It appears that the use of a semicolon may be in order to clarify this point. Finally, what is the difference between the terms “bears” and “contains” used in that provision? Is it possible for a product to “bear” an ingredient but not “contain” that ingredient? If not, then “bears or” should be deleted.

d. In s. Chir 12.02 (1) (c) 3., to what does the phrase “stating that the applicant has graduated from a program that is substantially equivalent to a postgraduate or diplomate program under subd. 1. or 2.” refer? Who must make this statement? Must the statement be included in the application for certification? Also, what is meant by “another approved accrediting agency”? How is it determined if an agency is “approved”? Who grants approval? Should the rule provide a list of approved agencies or, if the board plans to make approval determinations on a case by case basis, should the rule set forth the criteria that will be used to grant or deny approval?

e. In s. Chir 12.02 (1) (c) 4., should the rule provide a list of approved postgraduate programs? Is the approval referred to in this subdivision the same as approval under s. Chir 12.03? If so, that section should be cross-referenced. If not, the rule should set forth the criteria that will be used to grant or deny approval of postgraduate programs.

f. Section Chir 12.03 (1) (intro.) states that the board “may” approve a nutritional counseling education program if it meets the requirements set forth. Are there circumstances under which the board will deny approval of a program that meets all the requirements? If so, the rule should identify those circumstances. If not, then “may” should be changed to “shall.”

g. It appears that “and” should be inserted before “toxicity” in s. Chir. 12.03 (1) (b) 4.

h. In s. Chir. 12.03 (1) (b) 5., “of any of these nutrients” should be inserted after “deficiencies.”

i. In s. Chir. 12.03 (1) (b) 6., it appears that “and” should replace the comma.

j. In s. Chir. 12.03 (1) (b) 7., should “of the human body and the” be inserted after “needs”? Also, it appears that the “and” should replace the comma.

k. It appears that s. Chir 12.03 (1) (b) 13., should be rewritten as follows: “The efficacy, safety, risks, and benefits of glandular products, chelation therapy, and therapeutic enzymes.”

l. Section Chir 12.03 (1) (b) 19. requires a nutritional counseling education program to include core curriculum in “Infants, pregnancy and lactation.” This provision should be rewritten to indicate that the core curriculum is required to address only nutritional issues related to infants, pregnancy, and lactation.

m. In s. Chir 12.03 (1) (b) 20., should “nutritional” be inserted after “Geriatric”?

n. In s. Chir 12.03 (1) (b) 25., “supplement” should be plural.

o. The topics listed in s. Chir 12.03 (1) (b) 12., 17., and 25. appear to be somewhat redundant. Could these be rewritten to be less repetitive?

p. What is meant by the requirement that a program sponsor “validate” a program’s content in s. Chir 12.03 (1) (d)?

q. The requirements for instructors for nutritional counseling education programs in s. Chir 12.03 (1) (f) and (h) are unclear. Section Chir 12.03 (1) (f) specifies that instructors who are on the undergraduate or postgraduate faculty of a chiropractic college must meet certain requirements, but is silent as to what requirements must be met by an instructor who is not on the undergraduate or postgraduate faculty of a chiropractic college. It seems illogical to impose stricter requirements on a person who is already serving as a college faculty member than on a person who has no credentials or experience, as the rule appears to do. What requirements apply to an instructor who is not on the undergraduate or postgraduate faculty of a chiropractic college who wishes to serve as an instructor for a nutritional counseling education program? In addition, the requirement in s. Chir 12.03 (1) (h) that an instructor must be “qualified to present the course” is so vague as to be meaningless.

r. Section Chir 12.03 (1) (i) states that a chiropractor may not be allowed to begin another educational session until the chiropractor has passed “an assessment.” It appears that the rule should specify that a chiropractor may not advance to the next educational session until he or she has passed the assessment for the previous educational session.

s. The last two sentences of s. Chir 12.03 (2) (a) 8. are redundant with s. Chir 12.03 (1) (i) and do not set forth an item required to be included in an application. They should be deleted or rewritten in terms of a required component of an application for program approval.

t. What is “break testing,” referred to in s. Chir 12.03 (3)?

u. The rule should set forth the grounds and procedures for revocation of a program approval.

v. Section Chir 12.04 (intro.) should be rewritten to read: “The board may deny approval of an application submitted under s. Chir 12.03 for any of the following reasons:”.

w. In s. Chir 12.05 (1), “duly” is meaningless and should be deleted.

x. Section Chir 12.05 (2) should be rewritten to read: “The use of substances described in sub. (1) by a licensed chiropractor....”